



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

a public street solely for private use, the court in the principal case follows the weight of authority. *Tilly v. Mitchell & Lewis Co.*, 121 Wis. 1, 98 N. W. 969; *Bybee v. State*, 94 Ind. 443. But see *Rothschild & Co. v. Chicago*, 227 Ill. 205, 81 N. E. 407. See also 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1176. It is submitted, however, that the overhead bridge relieves street traffic *pro tanto* and so is not an obstruction but is rather a legitimate highway use. *Leitchfield Mercantile Co. v. Commonwealth*, 143 Ky. 163, 136 S. W. 639; *Kellogg v. Cincinnati Traction Co.*, 80 Ohio St. 331, 88 N. E. 882. As regards vacation of streets, power to authorize the same is customarily vested by the legislature in some municipal body. *Lowden v. Starr*, 171 Iowa, 528, 154 N. W. 331; *Curtiss v. Charlevoix Golf Ass'n*, 178 Mich. 50, 144 N. W. 818. This power, while discretionary with public officials, cannot be exercised arbitrarily. See *People ex rel. Brooklyn Cooperage Co. v. Gokey*, 177 App. Div. 61, 163 N. Y. Supp. 693; *City of Goldfield v. Golden Cycle Mining Co.*, 60 Colo. 220, 152 Pac. 896; 3 ABBOTT, MUNICIPAL CORPORATIONS, §§ 939, 940. Furthermore, the vacation of a street must be primarily for public, not for private benefit. *Sherwood v. City of Paterson*, 88 N. J. L. 456, 94 Atl. 311. See *Stevens v. City of Dublin*, 169 S. W. 188 (Tex. Civ. App.); TIEDEMAN, MUNICIPAL CORPORATIONS, § 308. In the principal case there was no evidence of benefit to the public through vacation of the street; the sole benefit accrued to the refining company. In fact, upon passage of the ordinance, the company fenced off the street. It seems, therefore, that the court properly declared this ordinance void.

PRINCIPAL AND SURETY—DEFENSES OF SURETY—CREDITOR'S FAILURE TO RECORD MORTGAGE.—The defendant, payee of a note secured by a chattel mortgage, indorsed the note and assigned the mortgage to the plaintiff. The mortgage was never recorded. Consequently, the maker's trustee in bankruptcy took the chattel free of the mortgage lien. The plaintiff sued the defendant as indorser of the note. *Held*, that he is discharged. *Auto Brokerage Co., Inc. v. Morris & Smith Auto Co., Inc.*, 174 N. Y. Supp. 188 (Sup. Ct.).

A creditor generally owes the surety no duty of affirmative action against the principal. The surety has no defense because the creditor's mere inactivity caused a loss of the latter's security, as by failing to foreclose a mortgage or suffering a judgment lien to expire. *Sheldon v. Williams*, 11 Neb. 272; *Kindt's Appeal*, 102 Pa. 441. This is because the surety can himself pay the debt and preserve the security. But where the creditor fails to do something which is peculiarly in his power to do, as recording a mortgage or other security, the surety should be discharged. *Bennett v. Taylor*, 43 Tex. Civ. App. 30, 93 S. W. 704; *Sullivan v. State*, 59 Ark. 47, 26 S. W. 194; *Burr v. Boyer*, 2 Neb. 265. *Contra*, *Philbrooks v. McEwen*, 29 Ind. 347; *Westchester Mortgage Co. v. McIntire*, 174 N. Y. App. Div. 525. In the present case, however, it does not appear that the defendant indorsed for the maker's accommodation. If his indorsement to the plaintiff was an independent transaction, then the indorser could have recorded the mortgage while in his hands. He is, then, as blamable as the plaintiff, and should not be discharged.

WILLS—CONSTRUCTION—GIFT TO A CLASS.—A will read, "I give the residue of my estate to my late husband's nephews and nieces, as follows: to A, B, C, D, and E, to be equally divided between them, share and share alike." Three of these legatees predeceased the testatrix. *Held*, that their shares should go intestate. *In re Deming's Will*, 174 N. Y. Supp. 172.

In the construction of wills there is a general presumption against intestacy. *Meiners v. Meiners*, 179 Mo. 614, 78 S. W. 795. This is especially true where there is a residuary clause, because it shows the testator meant to dispose of all his property by will. *Welsh v. Gist*, 101 Md. 606, 61 Atl. 665. Neverthe-